IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8344 Of 2004.

Shri Niloba K. Patil ... Petitioner.
V/s.
Kalyan Dombivali Municipal Corporation & ors. ... Respondents.

Shri Ajey S. Gadkari for the petitioner.

Shri Deepak Pandey i/b A.S. Rao for the respondents.

CORAM: R.C.CHAVAN,J

DATED: 11th January 2007.

P.C.:

. By this petition, the petitioner-plaintiff in Civil Suit No. 214/2004, takes exception to the order passed by the Civil Judge, JD., Kalyan, allowing application by one M/s Jayant Enterprises, through its Proprietor Shri Laxman Shivaji Patel for being joined as a party-defendant.

2. I have heard Advocate Shri Gadkari for the petitioner and Advocate Shri Deepak Pande holding for Shri A.S. Rao. This petition was marked for final hearing after notice was issued to the parties. According to the learned Counsel for the petitioner, petitioner had given land for development to M/s Jayant Enterprises, who got the plans sanctioned. The boundary between the

property retained by the petitioner and that allotted to M/s Jayant Enterprises was demarcated by a compound wall which is the subject matter of dispute in the suit bearing Civil Suit No. 214/2004. The Municipal Corporation of Kalyan had issued notice for demolition of that wall having encroached upon public way. The petitioner filed a suit for injunction against the Municipal Corporation for restraining it from demolishing the said wall. In that suit, the builder-Jayant Enterprises filed an application which was allowed by the learned trial Judge by the impugned order dated 20.8.2004.

3. A grievance made by the learned Counsel for the petitioner is that the learned trial Judge has passed the order without giving an opportunity to the petitioner of being heard. Therefore, he takes exception to the said order. Learned Counsel for the petitioner took me through the pleadings in Civil Suit No. 214/204 and also the application which has been allowed by the trial Court. It appears that the petitioiner has a dispute about boundary between his area and that of the intervnor Jayant Enterprises, and petitioner was required to file another Reg.Civil Suit No. 381/2004. Thus, though, petitioner might not have been heard by the learned trial

Judge while deciding the application, the fact remains that the respondent-builder has a stake in the compound which has been sought to be demolished by the Corporation, since the wall demarcates disputed boundary between the properties of parties. In view of this, merely because petitioner was not heard, the impugned order cannot be set aside since, it is not shown that the respondent-Jayant Enterprises was not a proper party to the proceeding. Learned Counsel for the petitioner has pointed out that the petitioner had not filed reply to this application before the trial Judge. On that count too the trial Court cannot be faulted for presuming that the petitioner had no opposition to make. In view of this, the impugned order does not call for interference in exercise of jurisdiction under Article 227 of the Constitution of India. Petition is consequently dismissed.

(R.C.CHAVAN,J.)